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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 556

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

WHITE OAK COAL COMPANY, INC.

PETITION FOR A WRIT OR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

Supreme Court of the United States

October Term, 1963

No.

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

WHITE OAK COAL COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, United Mine Workers of America (called "UMW"), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit[1] entered May 24, 1963, in Case No. 14,873, styled White Oak Coal Company,

[1] The United States Court of Appeals for the Sixth Circuit will be referred to herein either as "the Court of Appeals" or "Sixth Circuit".

Inc., Plaintiff-Appellee,[2] v. United Mine Workers of America, Defendant-Appellant, wherein said Court affirmed the judgment of the United States District Court for the Eastern District of Tennessee, Northern Division[3] entered November 3, 1961, ordering that White Oak recover of petitioner the sum of Three Hundred Ten Thousand Dollars ($310,000), with costs, consisting of compensatory damages of One Hundred Eighty-Five Thousand Dollars ($185,000) and punitive damages of One Hundred Twenty-Five Thousand Dollars ($125,000)[4] (R. 43),[5] as well as the order of said Sixth Circuit entered on July 22, 1963, amending its opinion filed May 24, 1963, herein, and denying to petitioner a timely filed petition for rehearing in the case (A. 28).[6]

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[2] White Oak Coal Company, Inc. will be referred to herein as "White Oak".

[3] The United States District Court for the Eastern District of Tennessee, Northern Division, will be referred to herein as the "district court" or the "trial court".

[4] The order of the district court entered November 3, 1961, overruled UMW's motion for judgment notwithstanding the verdict but granted a new trial unless within ten days from the date of entry of the order the plaintiff White Oak should file its written consent to a remittitur of Seventy-Five Thousand Dollars ($75,000) of the punitive award, which award had initially been Two Hundred Thousand Dollars ($200,000), in accordance with the jury's verdict. The order further provided that if the remittitur was accepted UMW's motion for a new trial would be denied. On November 6, 1961, White Oak filed its consent to the remittitur thus reducing the punitive award to One Hundred Twenty-Five Thousand Dollars ($125,000) (R. 44).

[5] The abbreviation "R." refers to the printed, certified record of the Sixth Circuit filed in the Supreme Court of the United States. References to page numbers therein will omit the letter "a".

[6] The abbreviation "A." refers to the Appendix to this Petition. References to page numbers therein will omit the letter "a".

A certified appendix record in said case, together with the proceedings in the Sixth Circuit, is furnished herewith in accordance with this Court's rules.

OPINIONS BELOW

The Sixth Circuit's opinion appears in the Appendix hereto beginning at page 1, and is reported in 318 F. 2d 591 (Adv. Op. August 19, 1963). The District Court's opinion, which is not reported appears in the Certified Record (R. 35-42).

JURISDICTION

The Sixth Circuit's judgment affirming the trial court's judgment, as aforesaid, was entered May 24, 1963 (A. 27), while the Sixth Circuit's order denying petitioner's petition to rehear was entered July 22, 1963 (A. 28).

The Court's jurisdiction is invoked under 28 USC Secs. 1254(1) and 2101(c).

BASIS FOR FEDERAL JURISDICTION IN THE FEDERAL COURT

In its amended complaint, White Oak alleged "The Court has jurisdiction of this action by virtue of the provisions of Section 303 of the Labor Management Relations Act of 1947 (29 USCA Sec. 187)."[7] (R. 11)

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[7] This reference is to Section 303 of the Labor-Management Relations Act, 1947, prior to amendment thereof by Section 704(c) of the Labor-Management Reporting and Disclosure Act of 1959 (Pub. L. 87-257, Title VII, Sec. 704(c), 73 Stat. 545, 29 USC Sec. 187. All references in this petition to "Section 303" are to Section 303 of the Act prior to the 1959 amendment. The amendment does not alter the questions involved.

QUESTIONS PRESENTED

1. May damages be awarded under Section 303 of the Labor Management Relations Act to a plaintiff, engaged in coal mining, against a union engaged in a strike against plaintiff for incidents occurring at the mining operations of other employers also engaged in coal mining at other locations and with whom the union also has a labor dispute, which incidents consisted of "violence sufficiently spectacular" that they become known to employees of a trucking contractor causing such employees to refuse to work at plaintiff's premises or to haul coal from plaintiff's mine because said employees might regard these incidents of violence as an indication of what might happen to them if they performed their duties at plaintiff's mine?

2. Is a jury verdict of labor union responsibility and a judgment for damages based thereon proper in an action under Section 303, Labor Management Relations Act, 1947, and the law of the State of Tennessee, where such responsibility was necessarily based upon the conduct of union members or of unknown persons and not that of agents or employees of the union, and not authorized, participated in or ratified by the union?

3. In a suit for damages under state law by an employer against a labor union, is a court empowered, notwithstanding the principles of federal preemption, to render judgment against the union for compensatory damages based upon the total loss sustained by the employer by reason of an economic strike of his employees, and for punitive damages, merely because violence and disorder for which the union is held responsible occurs during its course, where it affirma-

tively appears that the union is bargaining agent of the employees involved and that the employer's inability to operate and consequent losses were the result of primary union activity to obtain a union contract?

4. In an action for damages against a labor union in which plaintiff contends certain acts which occurred during a labor dispute constituted a violation of Section 303 of the Act and that the union's entire course of conduct during the dispute constituted a violation of state common and statute law, was the District Court empowered under the theory of ancillary or pendant jurisdiction, to determine the non-federal claim?

STATEMENT OF THE CASE

Kind of Action and the Judgment

By amended complaint (R. 11) White Oak charged that UMW, a labor organization, during the course of a 1959 strike, violated the Act's Section 303 and also common and statute law of Tennessee. UMW denied the amended complaint's material allegations (R. 15).

The jury found UMW liable under both federal and state law and found White Oak entitled to recover $185,000 in compensatory damages and $200,000 in punitive damages (R. 26). Judgment was entered accordingly (R. 27) and subsequently the District Court overruled UMW's motion for judgment n.o.v. and the various grounds of its motion for a new trial except ground 6 thereof in which UMW asserted that the punitive award manifested and was the result of passion, prejudice and caprice. The District Court found the verdict excessive in the amount of $75,000, and granted a new trial unless

White Oak accepted a remittitur of such amount (R. 41-43). White Oak accepted the remittitur and UMW filed its Notice of Appeal (R. 44).

On May 24, 1963, the Sixth Circuit affirmed, and on July 22, 1963, Sixth Circuit modified its opinion and denied a petition to rehear (A. 28).

The Facts, the Issues and the Decision of the Courts Below

(1) White Oak's Mining Operations, Its Contract With UMW and the Termination Thereof.

White Oak was one of several corporations through which the U. R. Arnold family engaged in the mining, processing and selling of coal. It was organized in 1957 and subsequently engaged in strip mining at two mines in Campbell County, Tennessee, and the operation of two preparation plants or "tipples". (R. 57-59, 64, 112).

White Oak operated under a UMW contract and all but one of its thirty or more employees were UMW members (R. 60, 64-66, 112, 116). In early 1959 UMW requested White Oak agree to a contract amendment and upon White Oak's refusal UMW gave a sixty-day notice of termination, effective March 15, 1959 (R. 69-70, 443, 444).

(2) Evidence of Interference With Independent Truckers Prior to Contract Termination.

Evidence of interference prior to the termination date of the contract with independent truckers hauling coal from one of White Oak's tipples was *at first* relied upon by the Sixth Circuit as a basis for affirming that UMW had engaged in a Taft-Hartley Act secondary boycott. In the decision on the petition to rehear, however, the Court modified its opinion holding that this interference was an "incidental and permis-

sible part" of the primary picketing, under the rule of *Local 761, International Union of Electrical, Radio & Machine Workers, AFL-CIO* v. *NLRB*, 366 U.S. 667 (A. 28).

This interference is with regard to three employees of a truck contractor who hauled coal from a White Oak tipple to a retail coal yard. While White Oak was still at work, but during the 60-day termination period, a group of unidentified men stopped the drivers near the entrance to the tipple and threatened them for hauling "non-union" coal (R. 145, 155-157, 197, 201-202). One of the drivers also claimed that a car tried to run him off the road (R. 146). Another said he was followed by a car for some distance (R. 247). UMW denied knowledge of or responsibility for these incidents (R. 476).

Though considering these incidents "permissive" under Section 303, the Sixth Circuit nevertheless found UMW had engaged in an unlawful secondary boycott. Significantly, however, they are the only incidents in the record which involve truckers ("secondary employees") working for White Oak.

(3) Events Relating to the Start of the Strike.

The strike began on March 16, a Monday. White Oak anticipated the closure by loading out all mined coal on the previous work day (R. 548-549, 353, 354, 568) and had not scheduled work at either of its tipples or its smaller mine March 16 (R. 74-75, 117, 517, 529). It had, however, called men to work at its larger mine and though there was confusion as to whether productive or repair work would be done (R. 521-522, 549-550), some of these men reported (R. 354-355). Among those reporting was Floyd Hemsworth, its

superintendent, and Jim Tidwell, assistant foreman and president of the UMW White Oak local union. Tidwell said he had understood that no productive work was to be undertaken (R. 554-555).

On the same day, UMW Representatives Prater and Daniels organized a motoreade of a number of members to publicize its dispute with a number of area coal operators (R. 446). The motoreade was to pass the White Oak mine on a public road. Prater, driving the lead car, missed a turn near the mine and, upon stopping to back up, saw Tidwell walking towards him from the mine. Tidwell told Daniels and Prater the employees were going to set the pumps and do repair work (R. 448, 555, 600). The three of them talked with superintendent Hemsworth, *who acknowledged that the conversation was completely friendly* (R. 361), and told him he could pump water or repair equipment so far as UMW was concerned (R. 356-361, 448, 449, 550). The motoreade left after a few minutes (R. 361, 379, 448).

Meetings were held thereafter between representatives of the union and the coal operators, including White Oak, and the Federal Mediation and Conciliation Service, and the proposed contract amendment was discussed. No agreement was reached and the strike continued (R. 77, 657-658).

(4) A Majority of White Oak Employees Adhered to UMW During the Entire Strike. NLRB Certification of UMW's Majority.

No work was performed at the White Oak mine after March 16 until a UMW contract was signed the following September (R. 98-100). Meanwhile White Oak put out "rumors" it was to start work, but according to its superintendent, never had enough men report

to resume work (R. 362). Most of the employees and truck drivers testified they had not been asked to return (R. 358, 362, 491, 517, 524-525, 529, 572, 535, 537, 541, 641, 649). Virtually all of these employees were members of UMW's White Oak Local Union and attended regular union meetings before and during the strike. Nearly all White Oak employees received union aid during the strike (R. 66, 207, 349, 380, 397, 408, 413, 414, 445, 490, 496, 512, 518, 526, 529, 535, 537, 541, 562). A union committee of three White Oak employees administered the union's relief program (R. 413, 561).

In May, 1959, Scott County Miners Union (sometimes referred to as "Southern Labor Union") petitioned NLRB for certification as bargaining representative of White Oak employees. UMW intervened in the case. The Board conducted an election on August 16, 1959, and certified that White Oak employees cast 15 votes for UMW and 8 for Scott County Miner's Union (R. 654-657).

(5) The End of the Strike.

Following the NLRB election a new corporation, owned principally by Arnold children, was organized to take over the White Oak equipment and employees. In September this corporation (Dixie Pine Coal Company) signed a UMW contract and work resumed (R. 99-101, 273-274, 288-289, 304, 675). Arnold himself did not start work until the spring of 1960, and then through another new corporation, Round Mountain Coal Company (R. 126, 134).

(6) The Destruction of White Oak Mining Equipment.

On the night of July 13, 1963, mining equipment at the smaller White Oak mine was destroyed by dynamite. Extensive investigation by local and state authorities failed to determine responsibility (R. 95-97, 128, 221-223, 230-235). UMW emphatically denied its involvement in the incident (R. 673-684; 473-474; 608-609).

(7) The Issues and the Determination Thereof.

The central issues submitted to the jury were whether UMW, through agents or "sub-agents", violated Section 303 and statute and common law of Tennessee,[8] and its verdict of liability was upheld by both the District Court and the Sixth Circuit.

The Sixth Circuit bases its conclusion on the legitimacy of jury inferences drawn from the totality of the evidence, and, as a premise to its conclusion, it dwells at length on a potpourri of incidents, discussed below, which occurred in the area during the course of the dispute and even four years before the dispute.

The Sixth Circuit thus held:

1. The jury correctly found a secondary boycott notwithstanding the absence of secondary employees save in instances in which the specific acts complained of were held "permissive" un-

[8] The District Court instructed the jury (R. 718) to consider whether UMW had violated Tennessee statutes making it a crime to engage in "willful prowling or traveling through the country or towns, to the disturbance of the peace," etc.; to obstruct a public or private highway; to carry pistols with the intent to go armed; to shoot or throw missles into a dwelling; to damage property by dynamite; and to transport explosives.

der Section 303—all on the theory that union actions at other places prevented the engagement of secondary employees.

2. The jury correctly found union "interference" under state law entitling White Oak to damages for total losses sustained during a strike and six months thereafter, on the theory that employees ceased work and remained away from work because of fear, notwithstanding the union's majority status and NLRB certification thereof, and notwithstanding the causal relationship between the losses sustained and the lawful concerted activity; and its conclusion was reached without regard to the principle of federal preemption.

3. The jury was entitled to infer, with respect to unlawful acts of unknown persons which occurred during the course of a labor dispute that such acts were participated in or were authorized by union agents or union members who had been appointed "sub-agents" with authority so to act; and that the evidence upon which such inference is based constitutes "clear proof" of responsibility for such acts, as required by Section 6 of the Norris-LaGuardia Act.

In addition to the foregoing, the Sixth Circuit, notwithstanding an almost total absence of proof relevant to the claimed secondary boycott, approved without discussion the exercise of ancillary jurisdiction with respect to the non-federal claim.

The other evidence detailed in its opinion by the Sixth Circuit in context with the facts stated above relates broadly to UMW's interest in the labor dispute.

A fact considered was the large monthly expenditure by UMW for grocery orders to striking members (R. 428-429). Another was the advent of a rival union, the so-called "Southern Labor Union", and the hotly stated resistance to it in UMW meetings—though no mention is made by the Court of the undisputed evidence of Southern Labor Union's reputation as a company sponsored union (R. 466-469).

Adopting the language of White Oak's Arnold, the Sixth Circuit found circumstantial weight in its conclusion that White Oak employees were "well satisfied" with their wages and that, prior to the strike, they didn't "complain" about expiration of the UMW contract (R. 71, 435).

The Court discusses at length the dynamiting of the Gilchrist tipple in nearby Jellico some ten miles from White Oak, and the subsequent clandestine dynamiting of the Snyder and Randolph auger in Kentucky. The Sixth Circuit says that UMW representatives "admitted" being at the Gilchrist tipple near midnight "prior to the dynamiting" yet it fails to mention that that particular "midnight" happened to be three months before the dynamiting incident! The dynamiting incident occurred in June (R. 220); Prater and Daniels were at the tipple on March 9 (R. 478-479). The Court also points out that UMW representatives were "in Jellico" on the night of the Gilchrist explosion, but it must be noted that this is where these men worked and resided at the time (R. 481-482, 607).

The Court notes that trucks hauling coal during the strike were shot at from ambush, and that on one of these occasions the truck had a "permit" from a UMW representative (R. 93, 146-148, 401).

The opinion twice states that a UMW member (Hubert Bailey) said during the strike that "as long as the union is paying us $25.00 a week and furnishing us plenty of dynamite, Arnold (White Oak) is not about to go back to work." It does not state, however, that the individual involved made the statement during, but wholly out of context with, the labor dispute and while he was engaged in making and drinking moonshine in a remote mountain section (R. 191-196). The Sixth Circuit held that the "agency" status of this individual to UMW was for the jury to decide because of his membership on a relief committee of one of the area local unions (not the local union at White Oak) and because, while at this work, certain of his meals were paid for by a UMW representative.[9]

The Court also refers to evidence that a UMW representative warned a White Oak employee not to vote,

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[9] James Veach, son of a coal mine operator, testified that in July 1959 he went up a mountain near Saxton, Kentucky, following a carload of boys to see if they had a moonshine still up there. He found they did. Present were John, Dave and Clarence Bryant, Hubert Bailey, Billy Rowe, B. Davis and a man named "The Big Bopper" (not a UMW member R. 465). They were all drinking. They gave him $5.00 to get them something to eat, which he did. Veach spent five hours with them during which time "Big Bopper" said, "I heard Arnold is going back to work" and Hubert Bailey replied, "As long as the union is paying us $25.00 per week and furnishes us plenty of dynamite, Arnold is not about to go back to work." He made no report of the incident until two or three weeks before the trial except to his father (R. 191-195). Bailey is identified as a truck driver for an auger operator. He was a resident of the "Buck Creek" section of Kentucky and joined the union in the spring of 1959 along with numerous other miners and truckers of that area (R. 461-462, 510). Bailey received $25.00 worth of groceries weekly and was a member of a local union committee in his area to check on the eligibility for relief of a great number of persons in the Buck Creek area. He was not employed by UMW in any capacity (R. 460, 464-465).

in the NLRB election for Southern Labor Union (R. 395-396), but it does not consider that objections were filed to the election by Southern Labor Union but were withdrawn.

The Sixth Circuit found probative a statement allegedly made by UMW Representative Daniels at a union meeting to the effect that the union had been accused of "blowing up things" and therefore that they "might as well go full blast ahead". The Court does not point out, however, that this was said as an inducement to picket and not to do violence of any kind (R. 258). The Court also considered the testimony of convicted perjuror Smiddy, who had not been a UMW member for more than twenty years, that Daniels had told him he would rather Smiddy would not continue as a White Oak night watchman and that Smiddy could "make more money working with a wrecking crew" (R. 371); it overlooked, however, that UMW had no objection to members working as nightwatchmen. UMW member McNeely, a White Oak employee, worked as a nightwatchman during the strike, but nevertheless continued to attend union meetings, continued to receive weekly grocery orders and was never molested in any way (R. 411-412).

The Court approved, over UMW's objection, the introduction of evidence of a beating inflicted upon an area non-union operator in 1955, some four years before the White Oak dispute, on the theory that it was probative of White Oak employees and truckers' state of mind in 1959 notwithstanding the absence of UMW representatives or of a then current union dispute with that operator (R. 153, 196-203, 259-266).

Significantly the Court approved, over UMW's objection, the introduction and jury consideration of evi-

dence of a notice posted by UMW pursuant to settlement of unfair labor practice charges with the National Labor Relations Board, notwithstanding the settlement agreement (of which the notice was a part) provided that such settlement *would not* be admissible in evidence in any court or cause except in a case brought by the Board. The notice recited UMW would not "restrain or coerce" employees in the exercise of their rights under the Act (R. 40-41, 81, 87-89, 137-139).

It is unnecessary to state this and similar evidence in further detail with regard to the questions presented by this petition. In sum, the Sixth Circuit felt that permissible jury conclusions therefrom were that unlawful acts had been committed and that agents of UMW were legally responsible for them.

REASONS FOR GRANTING WRIT

QUESTION NO. 1

A. A Question of Importance

The question presented is one of importance for the reason that the problems are of wide import dealing with basic rights of labor unions and their members under the Act. The decision seriously curtails unions and their members in their right to strike and to engage in picketing because it so circumscribes and conditions these rights it all but destroys them.

The Sixth Circuit concluded petitioner violated Section 303 of the Act because the union engaged in

> "'. . . violence sufficiently spectacular and in such proximity to appellee's operation as to become known to secondary employers and their employees and induce them to discontinue . . . hauling coal' for appellee . . . . From the evidence there can be no question that . . . the secondary employers and employees knew all about incidents at

the other locations and mines. They might reasonably regard these incidents as an indication as to what might happen to themselves if they persisted in mining or hauling coal for appellee. The incidents with respect to other mines and locations constitute a form of influence by the union." (A. 11).[10]

Neither this Court, the NLRB, nor any other Circuit Court has heretofore rendered any decision interpreting either Section 303 or Section 8(b)(4)(a), the so-called secondary boycott provisions of the Act, as they relate to this form of activity, but because of its impact upon all organized labor, the application of these sections in this manner should be decided by this Court.

It must be remembered that the activities relied upon by the Sixth Circuit to find a Section 303 violation were directed towards neither employers and employees involved in the dispute between White Oak and UMW nor directed against the employees of the Snyder Coal Company, the so-called secondary employer hauling coal for White Oak. The activities, relied upon as the illegal inducement, occurred as long as four years before and as long as three months after the dispute took place and were directed against other employers and employees at other mines at other locations.

[10] The Sixth Circuit also found interference with secondary employees at the entrance to White Oak's property and an employee on the way home a violation of Section 303, but on the Petition to Rehear amended its decision to find such conduct incidental and permissible to subsequent primary picketing citing *Local 761, Electrical Workers* v. *NLRB*, 366 U.S. 667. Having found such conduct permissible, Sixth Circuit should have reversed and remanded case for a new trial.

This decision represents a broad expansion of the secondary boycott provisions of the Act. It says, in effect, that when a union engages in a primary strike against employer A and, during that strike, engages in such violence that may come to the attention of secondary employees of employer B and has the effect of causing the secondary employees to cease performing work or services for employer C, such conduct violates Section 303 of the Act as to employers B and C. It thus makes all sufficiently spectacular violence a violation of Section 303 and Section 8(b)(4)(a) and subjects the union to damages not only for the direct consequences of the violent conduct, but for its *effect* on other employees at other locations, at other times and in other disputes.

Therefore, within a given area, before a union may strike against an employer, it can do so only if there has not been any spectacular violence in close proximity to the employer's operations within the past few years and only if the secondary employees might not reasonably decide that they would also be subjected to such violence. The striking employees and the union, of course, would have to have all the facts to make the decision to strike. Such facts, of course, would not be readily available. Secondly "spectacular violence" is such a general term that it would be difficult to decide what other people might include within that description.[11] Furthermore, the union and the employees

[11] The Sixth Circuit did not specify what violence it considered sufficiently spectacular to bring it to the attention of the employers and employees involved. Such knowledge by the employees was imputed by the Sixth Circuit and was not based upon testimony of the employees involved. However, in considering the agency issue, the Circuit Court cited two instances of dynamiting of

would have to guess as to secondary employers' and employees' knowledge of the violence and what they might reasonably conclude would happen to them under the circumstances. Limitations of the basic rights of unions and employees, guaranteed by the Act, by such vague and generalized concepts as outlined in this decision warrants review by this Court. It should be noted that not a single striking employee (of White Oak) participated in any of the illegal conduct or had any knowledge of it, yet their union is held liable for all losses suffered by White Oak occasioned by their strike.

It should be noted that the Sixth Circuit's Opinion relies solely upon its own decisions against the UMW as authority for its affirmance of the lower court's judgment citing *Sunfire Coal Company* v. *United Mine Workers of America*, 313 F.2d 108 (C.A. 6); *Flame Coal Company* v. *United Mine Workers of America*, 303 F. 2d 39 (C.A. 6); *Gilchrist* v. *United Mine Workers of America*, 290 F. 2d 36 (C.A. 6); *United Mine Workers of America* v. *Osborne Mining Co.*, 279 F. 2d 716 (C.A. 6). In these decisions the Sixth Circuit has not followed the teachings of this Court, and such failure has resulted in the imposition of damages against UMW amounting to over one million dollars with the resultant deprivation of the ability of large numbers of coal miners to participate in the collective bargaining process. These decisions stemming from the coal mining regions of Tennessee and Kentucky have been one of the most important factors in bring-

equipment and property. Therefore, it is assumed the spectacular violence referred to included the two incidents which occurred in May and June, 1959, and the incidents which occurred in 1955—four years prior to the dispute. (A. 23)

ing about economic chaos in these areas, the extent of which has caused it to come to the attention of the entire nation. There is now pending a petition for writ of certiorari in this Court, Case No. 447, to review the decision and judgment of the Sixth Circuit in *Sunfire Coal Company* v. *UMWA*, 313 F. 2d 108 (C.A. 6); which further deals with this condition. The Sixth Circuit's interpretation of these two cases enmeshes most of the problems involved. It is suggested that this Court might consider reviewing these cases together. However, it should be pointed out that these five cases did not encompass the spectacular violence theory but that the instant case represents a broad expansion of the secondary boycott provisions. Furthermore, such theory was not even submitted to the jury. Also all of these cases, except Sunfire and White Oak, were decided prior to Local 761 and are in conflict with it but Sixth Circuit has not followed Local 761 and has instead expanded the "literal approach" condemned by that case.

UMW submits that unions need greater clarification as to what are permissible acts under Sec. 303 under the circumstances outlined in this case, and it is necessary for this Court to clarify established evidentiary guide lines by which the true objectives of union activity can be ascertained in the absence of an admission of an illegal object, for the reason that these cases are being determined by juries totally inexperienced in such matters and without adequate appreciation of the complexities of the subject that has caused consternation even among labor relations experts since its enactment in 1947. Because the dispute is between an employer and employees almost all persons experienced in these matters are excluded from the jury.

B. Sixth Circuit's Decision Is in Conflict With the Decisions of This Court and Other Circuit Courts

The Sixth Circuit's decision that spectacular violence occurring within the context of a labor dispute at the mining operations of employers, at different times and at different locations other than the operations of the primary and/or secondary employer, constitutes conduct prohibited by Section 303, is in conflict with the principles and holdings enunciated by this Court in *NLRB* v. *International Rice Milling Company*, 341 U.S. 665 (1951); and *Local 761, International Union of Electrical, Radio and Machine Workers* v. *NLRB*, 366 U.S. 667.

The Sixth Circuit's affirmance herein makes violence attending the inducement of secondary employees a material factor to the question whether such activity is primary or secondary, contrary to this Court's holding that ". . . violence on the picket line . . . is not material. To reach it, the complaint more properly would have relied upon Section 8(b)(1)(a) of the Act, or would have addressed itself to local authorities. The substitution of violent coercion in place of peaceful persuasion would not in itself bring the complained-of conduct into conflict with Section 8(b)(4)." *NLRB* v. *International Rice Milling Company, supra.*

The decision also substitutes as a test of illegality the *effect* of the union's activity where this Court has laid down as a guide line, in accordance with the statute, that the union activity must have an *object* of forcing or requiring secondary employer to cease doing business with the primary employer. It ignores the decisions of this Court that primary activities are protected by the Act, regardless of their effect on sec-

ondary employees, and that it is only the secondary activities that are barred, and ignores the guide lines set down in *Local 761, supra; International Rice Milling, supra;* and *Local 1976, United Brotherhood of Carpenters and Joiners v. NLRB*, 357 U.S. 93. The object of UMW could not have been the inducement of Snyder employees to quit hauling coal from White Oak because this spectacular violence occurred four years prior to the dispute and two years before White Oak went into business and some of it occurred at least three months after the secondary employees quit hauling coal and White Oak was shut down by the strike. The record is devoid of evidence that UMW even knew that truck drivers were employed by the Snyder Coal Co.

Actually, neither the Board nor other Circuit Courts have experienced difficulty in determining legal primary and illegal secondary activities when the primary and secondary work sites were separated as in the instant case. The vexing problems occurred when both employers occupied the same sites.[12] The Sixth Circuit's holding is so far contrary to all decisions of this Court, of the Board and other circuits that it goes beyond even the literal approach of interpreting the secondary boycott sections, and brings within the prohibitions of section 303 activities that do not concern either the primary or secondary premises. The facts here show that UMW did not move its dispute with White Oak to the business site of the secondary em-

[12] The cases describing these difficulties are set forth in *Local 761, Electrical Workers* v. *NLRB*, 366 U.S. 667 and in *Carrier Corporation* v. *NLRB*, 2nd Cir. 311 F. 2d 135, in which a Petition for a Writ of Certiorari was granted, Case No. 925. For brevity these cases are not set forth in this Petition.

ployer but confined its dispute with White Oak to White Oak's mining operations.

QUESTION NO. 2

The Trial Court submitted to the jury, and the Sixth Circuit approved, the legal proposition that if an employer suffers damages resulting from a strike of his employees and there occurs, during the course of this strike unlawful conduct the guilty party becomes liable for all damages resulting from the legal conduct *and* the illegal conduct.

The manner of determination by the Sixth Circuit of the question of UMW responsibility involved a legal question and not merely a question of fact. It is of such great importance to all organized labor that a review of this question should be made by this Court.

The illegal acts for which UMW was held responsible are as follows:

(1) The violation of Section 303 under the Sixth Circuit's "spectacular violence" theory at mines other than White Oak.

(2) The violation of the law of Tennessee which consisted of the following:

a. Threats made against truck drivers of Snyder Coal Company in early March, prior to the strike which began March 16, 1959. Such threats were made by unknown persons and no evidence in the record links UMW with them.

b. The refusal of a majority of White Oak's employees to go to work on March 16 when their collective bargaining contract terminated.

c. The dynamiting of White Oak's equipment on July 13 by unknown persons.

Since the Sixth Circuit found secondary boycott liability under its spectacular violence theory, which violence occurred at mines other than those of the primary and secondary employer involved in this case, it was necessary to find evidence to support union responsibility for such spectacular violence. Having found such responsibility under the Federal law, the Sixth Circuit further determined that the same evidence supported the verdict that UMW was responsible for the violation of the law of Tennessee under the delimiting rule laid down by *Brotherhood of Carpenters & Joiners of America* v. *United States*, 330 U.S. 395. (A. 15). Evidently the Sixth Circuit recognized that the Norris-LaGuardia Act's agency section, 29 USC Sec. 106, applies to the non-federal cause of action since such delimiting rule involved the interpretation of that section in the *Brotherhood of Carpenter's* case.

A summary of the evidence found by the Sixth Circuit to be sufficient to sustain UMW's responsibility for all illegal conduct is as follows:

1. It was agreed that for the purposes of this case District 19, United Mine Workers of America, was an agent of the International Union, the Petitioner (A. 12) and Prater and Daniels, field representatives of District 19, asked Arnold, President of White Oak, to sign a new contract with UMW in March 1959 (A. 12).

2. Prater and Daniels were, "prior to the dynamiting of the Randolph mining property" (actually over three months prior thereto [R. 478, 479]—a fact

left out of Sixth Circuit's opinion), at the tipples belonging to Gilchrist & Sons where Randolph's coal was being processed and several truck drivers dumped their coal on the sidewalk when Prater asked one of them not to put the coal over the tipples (a strike was on among Gilchrist's employees at the tipples.) The "Randolph mining property" was an auger located in Kentucky belonging to the Snyder & Randolph Coal Co. The tipple was in Jellico, Tennessee and belonged to Gilchrist & Sons. The coal was trucked from the mine to the tipple to be processed and loaded.

3. Prater and Daniels were in Jellico, Tennessee on May 6, 1959, the night the Gilchrist tipples were blown up. Daniels at the time was at home in bed and Prater was in bed at the hotel where he lived (R. 465). Neither got up to investigate the explosion although they heard it and both saw it the next morning. The next day Prater called the sheriff when he heard some UMW members were arrested. (The record is silent as to whether any members were arrested or whether there was any further disposition of the case).

4. Prater told White Oak employees there would be war if the Southern Labor Union came into the field.

5. Prater and Hubert Bailey a UMW member, bought four pistols from a restaurant owner (A. 8) and antique gun collector (R. 162-464). Prater, during the months of May to July, bought gas and meals for Bailey, Cox, Eson Bryant, Clarence Bryant and Justice, all members of UMW, at the same restaurant. (Circuit Court did not refer to fact that these members supervised, for their Local Union, the disbursement of $25 a week grocery orders to those on strike

in their area (R. 460-462, 465). This did not include White Oak, Snyder & Randolph or Gilchrist). Bailey was overheard telling a group of men in July, "As long as the union is paying us $25 a week (grocery orders) and furnishing us plenty of dynamite, Arnold is not about to go back to work" (A. 13, 14).

6. Daniels, in a speech at a local union gathering, said as long as the union has been accused of doing damage and blowing up things, they "might as well go full blast ahead".[12] Daniels told Smiddy, a night watchman for White Oak,[13] that "I would rather you didn't work at that. The boys like you and they don't want to hurt you and don't want to get hurt." When the witness told him he had to work at something, Daniels said: "Well you can make more money working with a wrecking crew . . . one night's work will pay you more than you can work for . . . Arnold for a month." The witness then stated to Daniels: "I told him I didn't want that kind of a job" (A. 14).

None of the above constitutes sufficient circumstantial evidence that Prater or Daniels destroyed the Gilchrist tipples, Randolph's equipment or committed any of the illegal acts in 1955 or 1956. Nor does such evidence suffice to prove Bailey committed these acts but, if he did, there is no proof it was done at the behest of Prater or Daniels or any other union represen-

[12] Daniels then said he wanted to see them out on a picket line in Dellaco (R. 258). This was omitted from the opinion, although it was from the same testimony.

[13] Smiddy, a convicted perjurer, obtained the night watchman's job after reporting that Bailey and others told him they were going to "work over" Homer Marcum, a White Oak employee (R. 370, 371).

tative. Thus, there is by judicial decision an imposition of union liability for a Taft-Hartley violation that is contrary to the common law law of agency, the test of union's responsibility under Sec. 185(e) of the Act, and is contrary to the rationale of *UMWA* v. *Coronado Coal Co.*, 259 U.S. 344, 387, 391, *U. S.* v. *White*, 322 U.S. 694, and of the Court of Appeals for the District of Columbia in *International Ladies Garment Workers Union* v. *NLRB*, 99 App. D.C. 64, 70, 237 F. 2d 545 wherein the D. C. Circuit said that the imputation of the acts of one person to another "is forbidden" . . . "except when the one is acting as agent for the other" and is contrary to the decision of the Fifth Circuit, *NLRB* v. *Marshall Car Wheel Co.*, 218 F. 2d 409, 417, when it rejected the proposition that there was an agency relationship "between all strikers, the guilty employees and the union".

In addition, this decision, as it relates to the application of the Norris-LaGuardia agency test to be applied by Federal Courts in cases involving state causes of action, is contrary to interpretation by this Court in *International Brotherhood of Carpenters, supra.* The Sixth Circuit, recognizing the delimiting rule of *International Brotherhood of Carpenters, supra* totally misconstrues that decision's interpretation of Norris-LaGuardia's Section 6 that a union is not responsible for conduct except upon *clear proof* that it actually authorized, participated in or ratified the specified illegal conduct. None of the evidence relied upon by the Sixth Circuit, and none of the evidence introduced at the trial was to the effect that Petitioner had knowledge of the illegal acts before or after their occurrence or had taken *any* action in regard thereto. The only evidence in the record upon which the jury and Court

could rely was affirmative evidence that the Union did not authorize or participate in it in any way (R. 473, 607, 608, 673, 674).

An examination of this evidence reveals a total failure of it to prove that those unknown individuals who threatened Snyder truck drivers in early March were sub-agents of UMW. All of the evidence cited by the Sixth Circuit concerned activities which occurred in May and none of the individuals named were among those who interferred with these truck drivers.

Furthermore, there could be no causal connection between what occurred in May, June or July and the refusal of White Oak's employees and UMW members to work when their contract ran out in March. The contract termination and lawful union inducement was the obvious reason for the strike and UMW's majority support was still intact in August when an election was held by NLRB. However, the Sixth Circuit found that the jury could properly *infer* improper inducement because of UMW's fight with a rival union. Again, an impossibility, because this election campaign did not start until June nor does the record reveal any improper conduct directed against these employees during the campaign. The same applies to any statements made by union representatives prior to the dynamiting. This finding by the Sixth Circuit is based purely on speculation by it. There is not a scintilla of evidence that a majority of these employees quit work other than to support their collective bargaining demands.

As to the dynamiting of the Gilchrist tipples in May and Snyder & Randolph's anger in June, the Sixth Circuit's opinion establishes UMW's responsibility by finding UMW was engaged in a labor dispute when

such property damage occurred and that its representatives were in bed in their homes at the time one of the explosions occurred; one makes inquiry of the Sheriff if any union members have been arrested for one of the explosions; another representative at a subsequent date says we have been accused of the dynamiting and "we might as well go full blast ahead" and then calls for a picket line. It is submitted that such evidence does not satisfy any rule of law so as to make any person liable for such illegal conduct. Nor is the deficiency supplied if added to the hearsay testimony which establishes that a union member (Bailey), who had a duty of assisting in distributing relief to unemployed members on behalf of his local union, stated that Arnold (White Oak) won't work as long as the union gives relief and furnishes us dynamiite. Lacking evidence that this union member did commit any of the dynamiting and that the union did furnish him or any other member such dynamite such evidence does not fulfill the quantum of proof necessary under Taft-Hartley or Norris-LaGuardia to establish union responsibility; nor does the fact that one of these union representatives asked a guard not to work as a guard stating he could make more money as a member of a wrecking crew add to the quantum of proof necessary to fulfill Taft-Hartley's or Norris-LaGuardia's agency requirements. Certainly this could not be so absent proof that the guard committed any of these acts of dynamiting or that the union did pay anyone else to become a member of a wrecking crew and that such wrecking crew did commit any of the unlawful dynamiting. All of this evidence, considered as a whole, illustrates that what Sixth Circuit has done is to establish a new rule of law as it applies to union responsibility and one that is in conflict with governing statutes

and other case law. A rule so important should be reviewed by this Court.

The Circuit Court's opinion remains silent as to what evidence it considered sufficient to show UMW's responsibility for the incidents occurring in 1955 and 1956, three or four years prior to the incidents in the present case (A. 23, 24). The reason, of course, is that *no* such evidence was introduced at the trial except that these incidents occurred during what the Court described as a "No contract-No work" campaign. This brings into sharp focus Sixth Circuit's announcement of a new doctrine of union responsibility.[15]

By this method, the Sixth Circuit has in fact made a union responsible for *all* illegal conduct that may have occurred during the course of an economic strike—a theory, which, if applied, would destroy organized labor for the reason that a union does not and cannot control everyone who may be interested in a labor dispute. There is in the record—not detailed here—evidence that lends suspicion that these coal companies, hard pressed for funds caused by the strike, destroyed the equipment to collect insurance, but a jury should not be allowed to speculate between two alternative suspicions. Such procedure is condemned by the Sixth Circuit in non-labor cases *Troutman* v. *Mutual Life Ins. Co. of N. Y.*, 125 F. 2d 769; *Gulf Refining Co.* v. *Mark C. Walker & Son Co.*, 424 F. 2d 420, 425. The same law should apply in labor cases.

[15] UMW had contended that such evidence was inadmissible because (1) the UMW was not responsible; (2) too remote in time, and (3) if mental state of employees or employers was an issue then only their knowledge or mental state could be placed into evidence. Sixth Circuit did not write on this latter point.

Other circuits have condemned the raising of suspicions to the status of fact. *NLRB* v. *Sun Shipbuilding etc. Co.*, 3 Cir., 135 F. 2d 15, 31; *Hazel Atlas Glass Co.* v. *NLRB*, 4 Cir., 127 F. 2d 109; *NLRB* v. *Goodyear Tire & Rubber Co.*, 5 Cir., 129 F. 2d 661, 664.

QUESTION NO. 3

The Sixth Circuit, in a suit under statute and common law of Tennessee, has upheld a judgment for compensatory and punitive damages for activities not proscribed but protected under federal law.[16] The decision, which disregards the principle of federal preemption, has determined questions which importantly affect the national labor policy in a manner inconsistent with decisions of this Court, notably *Youngdahl* v. *Rainfair, Inc.*, 355 U.S. 131 (1957); *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959); *Association of Journeymen* v. *Borden*, 373 U.S. 390 (1963) and *Iron Workers Local 207* v. *Perko*, 373 U.S. 701 (1963).

The *Garmon* case held that absent an overriding state interest such as that involved in the maintenance of domestic peace, state courts[16] must defer to the ex-

[16] To the extent the District Court determined the non-federal or state law claim in the instant case it, in effect, sat as a court of the State of Tennessee, see *Metropolitan Life Insurance Company* v. *Metropolitan Insurance Company*, 180 F. Supp. 682, 688, (D.C., N.D., Ill., 1959) affirmed 277 F. 2d 896, and thus the *Garmon* rule is as applicable here as it would have been had White Oak brought its suit in the courts of Tennessee. As Chief Justice Hughes said in an analogous situation: "It is inadmissible that there should be one rule of state law for litigants in the state courts and another rule for litigants who bring the same question before the federal courts owing to the circumstances of diversity of citizenship." *Fidelity Union Trust Company* v. *Field*, 311 U.S. 169, 180 (1940).

clusive competence of the National Labor Relations Board where the activity of the subject matter of the litigation is arguably subject to the protections or prohibitions of the Act. Indeed *Garmon* distinguishes the cases of *United Construction Workers* v. *Laburnum Corp.*, 347 U.S. 656 (1954) and *United Automobile Workers* v. *Russell*, 356 U.S. 634 (1958), in which judgments for damages in suits against unions were upheld, on the theory that in those cases state jurisdiction was exercised only to compensate for "the direct consequences of the violent conduct." The *Rainfair* case held that the impact of federal preemption continues to be operative notwithstanding the occurrence of public disorder in a labor dispute. This Court there held that while a state was empowered to restrain acts of violence and the like it was without power to act with respect to those federally regulated aspects of the dispute unconnected with the violent conduct—that the state was without power to enter "the preempted domain of the National Labor Relations Board." That *Rainfair* was a suit for an injunction and not for damages is not a "significant" basis for distinction. As stated in the *Garmon* case (359 U.S. 236, 246):

> "Even the State's salutary efforts to redress private wrongs or grant compensation for past harm *cannot be exerted* to regulate activities that are potentially to the exclusive federal regulatory scheme." (Emphasis ours)

The *Borden* and *Perko* cases establish the currency of the *Garmon* rule.

That there was violence in the instant case is not denied, though as is discussed elsewhere, union re-

sponsibility therefor is denied. But apart from the question of responsibility it is clear that the greater part of the labor dispute at White Oak did not involve violence but was the result of the interplay of lawful or federally regulated acts of contending economic forces. It is, for example, more than arguably clear that federally protected rights were involved in the inducement of White Oak's employees to strike. This was not the action of a "stranger union", as was found to be the case in *Laburnum*, but the union to which every employee save one belonged. Similar rights are involved with respect to union's grant of relief to employees during the strike. Furthermore the Sixth Circuit, in the guise of applying state law, entered NLRB's protected domain when it impugned the vote cast in the NLRB election, favorable to UMW, and the action of White Oak's employees in demeaning themselves as union members during the strike and accepting union relief, by finding that those employees acted out of fear and not as their actions and their secret ballot cast under federally regulated circumstances would indicate. What are the limitations imposed by the doctrine of federal preemption on a state claim arising out of such a controversy? This Court has not answered this question fully in such a context, though *Garmon* and *Rainfair* may, as we think, answer the question. These cases, at least, point to an indicated conclusion.

In any event the Sixth Circuit does not begin to come to grips with the problem. Its failure to do so leaves outstanding the decision and judgment which rejects by every practical consideration the preemption principle.

The Sixth Circuit, since its White Oak decision, has expressly rejected the preemption principle as enunciated in the *Garmon* case insofar as state law claims are prosecuted in a federal court. See *Morton* v. *Local 20, Teamsters, Chauffeurs and Helpers Union*, 320 F. 2d 505 (1963). In *Morton* judgment was rendered against the union under Section 303 and, on the same facts, under state law. On appeal the union contended that the Federal District Court was without jurisdiction to entertain the claim for damages under state law in that there was no violence involved. In rejecting this contention the Sixth Circuit said: "We are not aware of such a distinction (between cases involving violence from cases which do not) and in fact are unable to appreciate any legal or logical reason for such a jurisdiction distinction." Indeed the Sixth Circuit went on to hold with respect to the state law claim (as well as the federal claim) that the mere absence of violence from the case did not "entitle defendants to absolution from punitive damages."

The *Morton* decision holds that the preemption principle does not bar assertion of a state law claim—even though its assertion in a state court might be barred thereby—if a federal court properly acquires ancillary jurisdiction of the claim. We think this decision, explicit in *Morton* and implicit in White Oak, is wrong. Even conceding applicability of the ancillary jurisdiction doctrine it is clear that the *Morton* decision results from a confusion of the entirely different rules of ancillary jurisdiction and federal preemption. Ancillary jurisdiction has to do with the power to act with regard to a claim under state law. Preemption, on the other hand, questions the applicability of state law. Obviously in a given case a federal court might have

jurisdiction over a state claim because of its pendant relationship to a federal claim. But the existence of ancillary jurisdiction presupposes the existence of a valid and assertable state claim. The doctrine of ancillary jurisdiction does not create or revive a state law claim which, by reason of preemption, could not be asserted in a state court.

It is manifest that the reasoning stated in the *Morton* case was the reasoning followed by the Sixth Circuit in its *White Oak* decision. Indeed the Sixth Circuit in the *Morton* case, cites its decision in the *White Oak* case as authority for its position. And that it followed the same reason expressed in *Morton* is shown in the Sixth Circuit's approval of a verdict for the "total damage sustained" by White Oak "as a result of defendant's acts, both legal and illegal,"[17] in utter conflict with the *Garmon* rule that "only those damages which are the direct and immediate result of violence may be recovered under state law."

The question of preemption posed by this case should be answered by this Court. The case ought not to be turned aside because of the incidents of violence involved. As federal law stands it is the incidents of violence which permit application of state law; and the instant case expands that principle, erroneously, we insist, so as to permit application of state law to all that

[17] The Court charged the jury that if it found that "picketing or other activity was at some times and places carried on in a legal manner and without an improper objective, but at other times the Union employed illegal means or showed . . . that one of its objectives, not merely incidental, was an illegal one, and further that all such acts, legal and illegal, were interrelated and parts of a single effort or campaign . . . *then the defendant would be liable for the total damage sustained by the plaintiff* as a result of the defendant's acts, both legal and illegal" (R. 719).

occurs in a strike and all that results therefrom in terms of both compensatory and punitive damages.[18] The staggering punitive award upheld points up the eclipse of federal law by state law from the standpoint of importance in cases of this type. Where the possibility of such a recovery exists the appeal of settlement through collective bargaining is weak, and the likelihood of prolonged dispute is increased. This is an additional reason why this Court should carefully define the extent of state law applicability in such cases.

The decisions of this Court, we submit, were not intended to be construed as they were in this case. That they have been so construed manifests the need for clarification of the principles involved.

QUESTION NO. 4

Sixth Circuit concluded "The District Court had jurisdiction to entertain a claim for damages under the federal statutes even though such claim was joined with a non-federal action for unlawful interference with business. *Flame Coal Company* v. *United Mine Workers of America*, 303 F. 2d 39 (C.A. 6); *United Mine Workers of America* v. *Osborne Mining Company*, 279 F. 2d 716 (C.A. 6)." However, UMW did not contest jurisdiction of the federal claim *but* did contest jurisdiction of the non-federal cause of action. UMW contended that the ancillary jurisdiction doctrine of *Hurn* v. *Oursler*, 289 U.S. 238, does not permit a federal court to entertain an action because the plaintiff has two causes of action against the same defendant, but to justify assertion of juris-

[18] Punitive damages are not recoverable under federal law, *United Mine Workers* v. *Patton*, 211 F. 2d 742 (C.A. 4, 1954), and the District Court so charged the jury (R. 722).

diction over a federal and a non-federal action both claims must "go precisely rest upon identical facts as to be little more than equivalent of different epithets to characterize the same group of circumstances." (289 U.S. 246).

UMW contends the two causes of action in the present case do not rest upon the "identical facts" but that the jury was permitted to find liability under the state cause of action upon facts that the Sixth Circuit found to be "permissible" conduct under Section 303 upon UMW's Petition for Rehearing (A. 28). However, the jury was permitted to find this conduct a violation of state law. Numerous other facts were submitted to the jury, and approved by Sixth Circuit, as unlawful interference under state law but not within the prohibitions of federal law. Some of these facts are as follows:

(1) The primary picketing by Prater and others of White Oak property on March 16 (A. 5).

(2) The interference with Eddie Ray Franklin on March 16 (A. 6).

(3) Issuance of an ex parte injunction for mass picketing, etc. (A. 7).

(4) The representation dispute with Southern Labor Union (A. 9).

(5) Speeches at Local Union meetings (A. 8).

(6) Maddox remark to one employee that he and his family might get in trouble and suffer bodily harm if Southern won the election (A. 7).

(7) Testimony of State Police concerning anonymous telephone calls by people expressing fear of being harmed (A. 14).

(8) Testimony of one truck driver of being stopped by unknown UMW men in 1955 and made to shovel the coal off his truck (A. 23).

Thus it is apparent that White Oak's claim of a non-federal violation rests upon facts totally unrelated to facts constituting Sixth Circuit's spectacular violence theory of secondary boycott, the basis of the federal violation.

Heretofore, the "importance of the jurisdictional issue involved" has grounded the issuance of certiorari. *Bell* v. *Hood*, 327 U.S. 678, 680. With labor litigation so prevalent and with crowded federal dockets menacing everyday administration of the Courts, Sixth Circuit's expansion of the *Hum* doctrine warrants a review of this decision by this Court and clarification of Federal jurisdiction in the labor field.

CONCLUSION

Petitioner submits this case presents a unique opportunity to decide four of the most important questions pertinent to the difficult labor-management relations field. All of them deal with issues that are extremely important to our entire economy, affect basic economic and civil rights of millions of our citizens and the administration of those rights and to the administration of an important Federal Statute by the courts and the National Labor Relations Board.

Therefore, Petitioner prays that this petition for writ of certiorari should be granted and a writ of

certiorari issue to review the decision and judgment of the United States Court of Appeals for the Sixth Circuit, entered in Case No. 14873 on May 24, 1963.

Respectfully submitted,

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